International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Ecuador under article 29 (1) of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Ecuador under article 29 (1) of the Convention (CED/C/ECU/1) at its 203rd and 204th meetings (see CED/C/SR.203 and 204), held on 8 and 9 March 2017. At its 213th meeting, held on 15 March 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Ecuador under article 29 (1) of the Convention, which was prepared in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the open and constructive dialogue with the high-level delegation from the State party on the measures taken by the latter to implement the provisions of the Convention, which has dispelled many of its concerns. The Committee also thanks the State party for its written replies (CED/C/ECU/Q/1/Add.1) to the list of issues (CED/C/ECU/Q/1), which were supplemented by the oral statements by the delegation during the dialogue, and for the additional information provided in writing.

B. Positive aspects

3. The Committee welcomes the fact that the State party has ratified all the core United Nations human rights instruments and almost all the optional protocols thereto, as well as the Inter-American Convention on Forced Disappearance of Persons and the Rome Statute of the International Criminal Court.

4. The Committee welcomes the fact that the State party has recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention.

5. The Committee also welcomes the measures adopted by the State party regarding matters related to the Convention, including:

(a) The inclusion of a provision in the Constitution which expressly states that "the following rights shall be recognized and guaranteed ... the right to integrity of the person, including ... the prohibition of enforced disappearance" (art. 66 (3) (c)), and that "legal actions and penalties for the offences of genocide, crimes against humanity, war crimes, enforced disappearance and crimes of aggression against a State are not subject to a statute of limitations and cannot under any circumstances be subject to amnesty. The fact

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that one of these offences was committed by a subordinate shall not exempt from criminal liability either the superior who ordered it or the subordinate who carried it out" (art. 80);

(b) The adoption of the Criminal Code, in February 2014, which, among other things, classifies enforced disappearance as a separate offence (art. 84), establishes the non-applicability of statutory limitations with regard to both legal action and penalties (arts. 16 (4) and 75), prohibits the granting of pardon or amnesty for the offence of enforced disappearance (art. 73) and classifies enforced disappearance as a crime against humanity when the offence of enforced disappearance is committed as part of a widespread or systematic attack against a civilian population (art. 89);

(c) The adoption of the Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity committed in Ecuador between 4 October 1983 and 31 December 2008, in December 2013;

(d) The repeal of the Military Criminal Code, in May 2010;

(e) The establishment of the Truth Commission, tasked with investigating and elucidating, and preventing impunity for, acts of violence and human rights violations committed between 1984 and 1988 or during other periods, pursuant to Executive Decree No. 305 of May 2007.

6. The Committee welcomes the assurances provided by the State party that the phrase "thereby preventing the exercise of constitutional or legal guarantees" that is included in the definition of enforced disappearance set out in article 84 of the Criminal Code is not a constituent element of the offence but the direct consequence of the criminal conduct.

7. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council to visit the country.

C. Principal subjects of concern and recommendations

8. The Committee recognizes that the legislation in force in the State party to prevent, and impose penalties for, enforced disappearances is by and large in line with the provisions of the Convention and the obligations imposed by the latter on States that have ratified it. The recommendations set out in the present concluding observations have been made in a constructive and cooperative spirit to assist the State party in giving full effect, in law and in practice, to the latter's obligations under the Convention.

Criminal responsibility and judicial cooperation in relation to enforced disappearance (arts. 8-15)

Enforced disappearances allegedly committed between 1984 and 2008

9. The Committee notes that the Truth Commission identified a total of 17 victims of enforced disappearance during the period from 1984 to 2008 and takes note of the information provided by the State party that the whereabouts of five of the victims are known. The Committee also takes note of the information received concerning the status of the investigations into cases of enforced disappearance in the González et al. case (Fybeca case) and the Vaca, Cajas and Jarrín case, relating to a total of seven victims. However, it is concerned that these proceedings have not yet been concluded and that prosecutions have yet to be brought in cases relating to the other victims. Similarly, it takes note of the measures taken to search for the victims of enforced disappearance, but it is concerned that 12 victims remain disappeared. The Committee welcomes the symbolic reparation measures taken by the State party and takes note of the information provided on the steps taken so far within the framework of the reparation programme administered by the Ombudsman's Office (arts. 12 and 24).

10. **The Committee recommends that the State party:**

(a) **Take the necessary measures to expedite the judicial proceedings for enforced disappearance relating to the period from 1984 to 2008 that are under way; bring to trial, as soon as possible, cases that are at the preliminary investigation stage; and ensure that all suspected perpetrators are prosecuted and, if found guilty, punished in accordance with the grave nature of their acts;**

(b) **Step up its efforts to locate any persons subjected to enforced disappearance during the period from 1984 to 2008 and whose fate is not yet known and, in the event of death, to identify, respect and return their remains in a dignified manner;**

(c) **Continue and strengthen its efforts to ensure that all persons who have suffered harm as a direct result of an enforced disappearance perpetrated during the period from 1984 to 2008 receive full reparation, including measures for their rehabilitation.**

Continuous nature of the offence of enforced disappearance

11. The Committee welcomes the State party's statement that, given its continuous and imprescriptible character, the offence of enforced disappearance provided for in article 84 of the Criminal Code could be applied to enforced disappearances that may have commenced prior to the entry into force of that article but continued thereafter. While it notes that the González et al. case (Fybeca case) has been prosecuted so far under the offence of abduction committed under the modality of enforced disappearance, since the events had allegedly taken place in 2003 when enforced disappearance was not yet classified as a specific offence, the Committee notes with interest the statement by the State party in the course of the dialogue that, at the proposal of the prosecutor, the judge may reclassify the offence at the hearing held for the reformulation of charges, in accordance with article 596 of the Criminal Code (arts. 8 and 12).

12. **The Committee urges the State party to adopt the necessary measures to ensure that all cases of enforced disappearance that occurred prior to the entry into force of the Criminal Code but continued thereafter are prosecuted under the offence of enforced disappearance provided for in article 84 of the Code.**

Prevention and sanction of acts that may hinder the conduct of investigations

13. The Committee takes note that the National Police Personnel Act provides for the possibility of placing police personnel on "temporary reassignment" pursuant to the issuance of a court summons against the officer concerned and that the Armed Forces Personnel Act provides for the possibility of placing military personnel in "reserve" on a number of grounds, including the issuance of a court summons against the person in question. It also takes note of the information provided by the State party to the effect that prosecutors lead investigations and that they may avail themselves of the support of other bodies, such as the national police, in the conduct of investigations and that, in a case of enforced disappearance, the prosecutor would not have access to the support of the national police. While emphasizing the obligation to respect the right of all persons to be presumed innocent, the Committee is concerned that no provision allows for the possibility of State officials suspected of involvement in the commission of an offence of enforced disappearance being suspended from their duties — from the outset, and for the duration, of the investigation — as a tool for preventing acts that may hinder the conduct of investigations, in accordance with article 12 (4) of the Convention (art. 12).

14. **In order to ensure that, in accordance with article 12 (4) of the Convention, all acts that may hinder the conduct of investigations are prevented and, in particular, to ensure that all persons suspected of having committed an offence of enforced disappearance are not in a position to directly or indirectly influence the progress of an investigation, the Committee recommends that the State party adopt the necessary measures to ensure, without prejudice to the presumption of innocence, that State officials suspected of involvement in the commission of an enforced disappearance are suspended from their duties from the outset, and for the duration, of the investigation.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

15. The Committee welcomes the fact that article 66 (14) of the Constitution of Ecuador establishes that "foreign nationals may not be expelled or returned to a country where the life, freedom, security or safety of the persons involved or of members of their families would be threatened" and takes note of the statement by the State party that the principle of non-refoulement is fully guaranteed in practice. The Committee takes note with interest of the recently adopted Human Mobility Act. However, it notes that the Act establishes a period of 90 days after entry into the State party in which to apply for refugee status and that a late application could be accepted only for duly proven reasons of unforeseeable circumstances or force majeure. While it takes note of the fact that any person claiming refugee status will be guaranteed access to the refugee status determination procedure and notes the remedies available in the event of an asylum application being declared inadmissible or refugee status being denied, the Committee is concerned that the application of the time period for seeking refugee status may give rise to cases of refoulement, in violation of the prohibition enshrined in article 16 of the Convention (art. 16).

16. **The Committee recommends that the State party ensure that no one is expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would face a risk of being subjected to enforced disappearance, in particular by ensuring that regulations relating to applications for refugee status are applied in a manner fully consistent with the prohibition of refoulement provided for in article 16 of the Convention.**

National preventive mechanism

17. The Committee welcomes the fact that the State party has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that it established the national preventive mechanism in October 2013, since it considers that those measures could be instrumental in preventing enforced disappearances and other violations of the rights and obligations contained in the Convention. While it takes note of the concern expressed by the Committee against Torture in its latest concluding observations concerning the weak legislative framework for the national preventive mechanism (see CAT/C/ECU/CO/7, para. 15), the Committee takes note with interest of the information provided by the State party to the effect that the report for the first debate on the draft Office of the Ombudsman Organization Act, which contains provisions on the functioning and powers of the national mechanism for the prevention of torture, was adopted in September 2014 and is currently being considered by the National Assembly. It regrets, however, that the Act has not yet been adopted (art. 17).

18. **The Committee encourages the State party to take such measures as may be necessary to expedite the passage of the draft Office of the Ombudsman Organization Act and to ensure that the provisions relating to the functions and powers of the national mechanism for the prevention of torture are in full conformity with the Optional Protocol to the Convention against Torture so as to ensure that the mechanism has a solid legal basis that allows it to discharge its mandate effectively and independently. The Committee also recommends that the State party ensure that the national mechanism has adequate human, financial and technical resources.**

Training on the Convention

19. The Committee welcomes the information provided by the State party on the steps taken to ensure human rights training for various State officials, including officials of the national police, the armed forces and the prison system. It also notes with satisfaction that the training provided for judges, prosecutors and public defenders contains a module on issues related to enforced disappearance. It regrets, however, that it has not received detailed information on whether specific training is provided to all State officials on the

relevant provisions of the Convention in the terms provided for in article 23 (1) thereof (art. 23).

20. **The Committee recommends that the State party continue its efforts to provide human rights training for State officials and, in particular, that it ensure that all law enforcement and security personnel, whether civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive specific and regular training on the provisions of the Convention, in accordance with article 23 (1) thereof.**

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Legal situation of disappeared persons whose fate has not been clarified and that of their relatives

21. The Committee considers that a system governing the legal situation of disappeared persons whose fate has not been clarified such as that contemplated under articles 66 to 80 of the Civil Code relating to the presumption of death by disappearance does not accurately reflect the complexity of enforced disappearance. The Committee reiterates its position that, in view of the continuous nature of enforced disappearance, in principle and unless there is concrete evidence to the contrary, there is no reason to presume that a disappeared person has died so long as his or her fate has not been determined. In this connection, the Committee also notes with concern that article 6 of the Act on Reparation for Victims and Prosecution of Serious Human Rights Violations and Crimes against Humanity committed in Ecuador between 4 October 1983 and 31 December 2008 provides that, at the request of the interested party, a declaration of presumed death and of definitive possession of the property of the victims of enforced disappearance may be made as a result of the presumption of death by disappearance, in accordance with articles 68 to 80 of the Civil Code (art. 24).

22. **In the light of article 24 (6) of the Convention, the Committee recommends that the State party adopt the measures necessary to ensure that domestic law deals appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights, without the presumed death of the disappeared person having to be declared. In this respect, the Committee encourages the State party to establish a procedure to obtain a declaration of absence by reason of enforced disappearance.**

D. Dissemination and follow-up

23. The Committee wishes to draw attention to the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments.

24. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearance on the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisal as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. In this context, the Committee places special emphasis on the need to ensure

that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

25. The State party is urged to disseminate the Convention as widely as possible, as well as the content of its report submitted under article 29 (1) of the Convention, the written replies it has provided in response to the list of issues prepared by the Committee and the present concluding observations, in order to create awareness among the judicial, legislative and administrative authorities, civil society and the NGOs that are active in the State party, as well as the public in general. The Committee further encourages the State party to facilitate the participation of civil society, especially the organizations of victims' families, in the implementation of the present concluding observations.

26. In accordance with the Committee's rules of procedure, the State party is requested to provide, not later than 17 March 2018, all information relevant to the implementation of the Committee's recommendations contained in paragraphs 10, 16 and 22 of the present concluding observations.

27. In accordance with article 29 (4) of the Convention, the Committee requests the State party, by 17 March 2023 at the latest, to submit concrete, up-to-date information regarding the implementation of all its recommendations, as well as any additional information concerning the implementation of the obligations contained in the Convention, in a document prepared in accordance with the guidelines on the form and content of reports to be submitted by States parties under article 29 of the Convention (see CED/C/2, para. 39). The Committee encourages the State party, when preparing this information, to continue consulting civil society, in particular the organizations of victims' families.